

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 10-469 CW

Plaintiff,

ORDER DENYING

v.

REQUEST FOR

EXTENSION OF TIME

ANTOINE NICHOLAS MOORE,

Defendants.

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On September 7, 2011, Defendant Antoine Moore plead guilty to one count of being a felon in possession of a firearm and ammunition in violation of 18 U.S.C. § 922(g)(1). Judgment was entered against Mr. Moore on March 30, 2012. Mr. Moore has filed a request for an extension of time to file a § 2255 habeas corpus petition.

However, because Mr. Moore has not yet filed his habeas petition, there is no case or controversy over which this court may exercise jurisdiction. Accordingly, the Court may not grant Mr. Moore's request, which "in essence asks the Court to determine in advance whether his petition for writ of habeas corpus will be time-barred if it is filed at some unspecified date in the future and is subjected to a motion to dismiss under the limitations period." Bjorn v. Warden, 2009 U.S. Dist. LEXIS 56211 (N.D. Cal.) Courts routinely deny requests for extensions of time to file a habeas corpus petition. See, e.g., United States v. Leon, 203 F.3d 162, 164 (2d Cir. 2000) (holding that a federal court lacks jurisdiction to consider the timeliness of a § 2255 petition until

1 a petition is actually filed); Brown v. Hedgpeth, 2012 U.S. Dist.
2 LEXIS 190020 (C.D. Cal.) (dismissing without prejudice an action
3 opened when a state prisoner filed a motion for extension of time
4 to file a § 2254 habeas petition); Bjorn v. Warden, 2009 U.S.
5 Dist. LEXIS 56211 (same); Chairez v. Adams, 2007 U.S. Dist. LEXIS
6 45206 (N.D. Cal.) (same).

7 If and when Mr. Moore files his habeas petition, he may make
8 a tolling argument as to why the time should be extended if his
9 petition is not timely filed and respondent moves to dismiss on
10 that ground. See United States v. Battles, 362 F.3d 1195, 1197
11 (9th Cir. 2004) (holding that equitable tolling applies to § 2255
12 petitions).

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14 IT IS SO ORDERED.

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16 Dated: 3/21/2013

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18 CLAUDIA WILKEN
19 United States District Judge
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